Supreme Court, U.S.
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No. ——

IN THE

Supreme Court of the United States

LOCAL UNION 1393, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Petitioner,

v.

UTILITIES DISTRICT OF WESTERN INDIANA RURAL ELECTRIC MEMBERSHIP COOPERATIVE,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a discharge grievance is subject to arbitration under a collective bargaining agreement that contains a "cause" limitation on the employer's right to terminate seniority but no similar language with respect to the employer's right to terminate employment.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings in the United States Court of Appeals for the Seventh Circuit, with the exception of amici curiae, appear in the caption to this Petition.

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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PETITION FOR WRIT OF CERTIORARI

Local Union No. 1393, International Brotherhood of Electrical Workers, AFL-CIO, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on February 12, 1999 in this case.

CITATIONS TO OPINION BELOW

The decision of the United States Court of Appeals for the Seventh Circuit is officially reported at 167 F.3d 1181 (7th Cir. 1999) and appears in the Appendix of

this petition at pages App. 1a-8a.[1] The decision of the United States District Court for the Southern District of Indiana is not published in either an official or unofficial reporter. It appears in the Appendix of this petition at pages App. 9a-19a.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on February 12, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 203(d) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 173(b).

Section 301(a) of the LMRA, 29 U.S.C. § 185(a).

Pursuant to Supreme Court Rule 14(f) the text of these statutes are set forth, *infra,* at App. 22a.

STATEMENT OF THE CASE

A. The Facts and The Jurisdiction of the District Court.

The jurisdiction of the District Court was invoked under 28 U.S.C. § 1331 (general federal question jurisdiction) and 29 U.S.C. § 185(a) (jurisdiction over disputes arising under collective bargaining agreements). In the District Court, Petitioner Local Union No. 1393, International Brotherhood of Electrical Workers, AFL-CIO ("Local 1393") filed a complaint against the Respondent, Utilities District of Western Indiana Rural Electric Membership Cooperation ("UDWI"), to compel arbitration under a collective bargaining agreement of a grievance

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[1] References to the Appendix to this petition will be as follows: "App. ——."

protesting UDWI's discharge of a bargaining unit employee named Dennis Bays ("Bays"). (App. 9a.)

Local 1393 and UDWI are parties to a collective bargaining agreement ("CBA") effective July 1, 1997, governing the terms and conditions of employment of UDWI's production, maintenance and construction employees. (App. 10a.)

Article III, Section 1 of the CBA broadly defines a grievance as "[a]ny difference arising between an employee or a group of employees as to [UDWI's] interpretation or application of this Agreement or any of its terms and conditions. . . ." (App. 10a.) The CBA contains grievance/arbitration procedures that culminate in arbitration. The arbitration clause in the CBA precludes arbitration of "questions of management and matters retained by the employer as provided in [Section] 5 of Article II", but permits arbitration "as to any other questions." (App. 11a.)

Article II, Section 5 of the CBA, referenced in the arbitration clause, is the management rights clause. It states, in relevant part:

> Subject only to any limitations contained in this Agreement, the Union recognizes and agrees that the Employer retains the exclusive rights to . . . discharge . . . and discipline its employees. . . .

(App. 11a.) Also of relevance is Article V, Section 4 of the CBA, the seniority clause, which provides:

> Seniority shall be considered broken and seniority shall not be restored to a regular employee who . . . is discharged for cause. . . .

(App. 12a.)

B. Proceedings Below.

On or about January 28, 1998, the parties filed respective motions for summary judgment. Local 1393 argued that Article V, Section 4 of the CBA, which expressly limits the right of UDWI to terminate the seniority of an employee to situations where the employee is discharged "for cause", by implication places a limitation on UDWI's right to discharge. Consequently, the grievance over Bays' discharge should be subject to arbitration.

On or about May 19, 1998, the District Court denied Local 1393's motion for summary judgment and granted UDWI's motion for summary judgment. The District Court found controlling the language contained in the management rights clause that "the Employer retains the exclusive rights to . . . discharge . . . and discipline." The District Court maintained that the "arbitration and grievance procedure specifically exempted [the right to discharge] from having to be subject to arbitration." (App. 17a.) Furthermore, the District Court found that the seniority provision of Article V could not be read as limiting the employer's right to discharge under the management rights clause. According to the District Court,

> The right to discharge and the right to end an employee's seniority are two different rights. Seniority refers to the continuous service of an employee and is a factor the employer takes into account when making employment decisions. . . . [S]eniority is not coterminous with employment.

(App. 16a.)

On May 28, 1998 Local 1393 filed its Notice of Appeal to the United States Court of Appeals for the Seventh Circuit ("Seventh Circuit"). On February 12, 1999, the Seventh Circuit affirmed the decision of the District Court. (App. 1a-2a.)

The Seventh Circuit acknowledged that this Court's jurisprudence on labor arbitration requires that arbitration be compelled whenever an arbitration clause is merely "susceptible of an interpretation that covers the asserted dispute" and that federal courts resolve any doubts as to arbitrability in favor of coverage. *A T & T Technologies, Inc. v. Communication Workers of America*, 475 U.S. 643 (1986), and *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960). (App. 4a). The Seventh Circuit further noted, quoting from its decision in *International Bhd. of Teamsters Local 371 v. Logistics Support Group*, 999 F.2d 227, 230 (7th Cir. 1993), that "the management rights clause may not be considered apart from the rest of the agreement." (App. 5a.) Nonetheless, the Seventh Circuit affirmed the District Court's refusal to compel arbitration.

In affirming the District Court, the Seventh Circuit held that the seniority rights clause could be considered neither an express nor an implied limitation on UDWI's right to discharge its employees. The Seventh Circuit found that "[a] termination of employment does not necessarily also terminate seniority and therefore violate the seniority rights clause of the CBA", and that "[t]he right to seniority and the right to continued employment are distinct concepts". (App. 6a.) The Seventh Circuit further concluded that, although the presence of an arbitration clause and a "cause" requirement for the removal and termination of seniority each implies a "just cause" limitation on the right to discharge, no such implication could be found in the present case because the terms of the management rights clause "so clearly state that the Utilities District possesses plenary authority over discharge decisions." (App. 6a.) Consequently, the Seventh Circuit concluded that the CBA was not at least susceptible of an interpretation covering the dispute over Bays' dis-

charge and affirmed the District Court's judgment denying arbitration. (App. 7a.)

On February 23, 1999, Local 1393 submitted to the Seventh Circuit a petition for rehearing and suggestion for rehearing *en banc*. On March 10, 1999, the Seventh Circuit denied the petition for rehearing. (App. 20a-21a.)

REASONS FOR GRANTING THE WRIT

The Seventh Circuit's decision in this case is in direct conflict with decisions rendered by the Eighth and Ninth Circuits, creating a split in the Circuits concerning the proper construction and interpretation of collective bargaining agreements which contain a "cause" limitation on the employer's right to terminate seniority but no similar language with respect to the employer's right to terminate employment. This split in the Circuits can only be resolved by this Court because it involves the heretofore strong federal policy favoring arbitration of labor disputes over the resort to legal or economic warfare.

Indeed, the Seventh Circuit's decision is contrary to the decisions of this Court not only favoring arbitration, but also creating a presumption of arbitrability when interpreting collective bargaining agreements that contain arbitration clauses. The decision of the Seventh Circuit so far departs from the accepted and usual application of federal labor policy as to invoke the supervisory powers of this Court. Therefore, this case provides this Court with the opportunity to prevent substantial damage to the national labor policy of submitting disputes to arbitration.

I. THIS COURT SHOULD GRANT THE WRIT TO RESOLVE A SPLIT IN THE CIRCUITS THAT THREATENS THE ORDERLY ADMINISTRATION OF JUSTICE IN VIRTUALLY ALL CASES INVOLVING COLLECTIVE BARGAINING AGREEMENTS WHICH RESTRICT AN EMPLOYER'S RIGHT TO TERMINATE SENIORITY BUT ARE SILENT ON THE EMPLOYER'S RIGHT TO DISCHARGE.

In finding that the language of the management rights clause of the CBA was not restricted in any way by the seniority provision of Article V, the Seventh Circuit quoted with approval the observation of the District Court that

> [t]he right to discharge and the right to end an employee's seniority are two different rights. Seniority refers to the continuous service of an employee and is a factor the employer takes into account when making employment decisions. . . . [S]eniority is not coterminous with employment.

(App.. 3a-4a.) Relying on the District Court's analysis, the Seventh Circuit went on to conclude as follows:

> We do not believe that the seniority rights clause can be considered an express limitation on the right of the employer to terminate employees. A termination of employment does not necessarily also terminate seniority and therefore violate the seniority rights clause of the CBA. The right to seniority and the right to continued employment are distinct concepts that the parties to a CBA may choose to treat separately.

(App. 6a.)

Neither the District Court nor the Seventh Circuit cited case law to support these holdings because no such foun-

dation is available. Rather, the opinion of the Seventh Circuit goes against a well-established body of legal authority and a vast body of arbitral authority holding that the termination of seniority is the concomitant of the termination of employment. If an employee has seniority rights, but no job, he has nothing; the distinction drawn by the Seventh Circuit between loss of employment and loss of seniority is one without substance or meaning.

If left to stand, the determination of the Seventh Circuit would leave a split in the Circuits concerning the proper interpretation of collective bargaining agreements that contain a "cause" limitation on the employer's right to terminate seniority but contain no such language with respect to termination of employment.

In *SFIC Properties v. International Assn. of Machinists & Aerospace Workers, Dist. Lodge 94*, 103 F.3d 923 (9th Cir. 1996), *cert. denied*, 118 S. Ct. 80 (1997), the Ninth Circuit reversed the District Court's vacating of an arbitrator's award involving a collective bargaining agreement with a seniority provision similar to the seniority provision in the instant case. In *SFIC Properties*, the Ninth Circuit approved of the arbitrator's inferring a just cause requirement for discharge from two different sources in interpeting the CBA at issue:

> First [the arbitrator] noted that "sufficient or just cause requirements will be inferred in all modern day collective bargaining agreements which do not contain an express 'just cause' standard for discharge provision." Second, he concluded that the CBA's seniority section, which stipulates that in the event of "dismissal for cause" an employee loses his seniority, implied a just cause requirement.

103 F.3d at 925.

The Ninth Circuit noted that "it is very common . . . to infer just cause requirements from CBA's which are silent on the issue . . . ." 103 F.3d at 926. In essence, the Ninth Circuit acknowledged the principle, recognized explicitly and implicitly in an overwhelming number of published arbitration decisions [2], that a limitation on an employer's right to terminate an employee's seniority is tantamount to a limitation on its right to discharge. Contrary to the Seventh Circuit's view, employment termination and the loss of seniority are ordinarily coterminous in labor relations law. Indeed, as the Ninth Circuit observed, it is "difficult to imagine a meeting of the minds between an employer and a union authorizing an employer to discharge an employee without good cause." *Id., citing Dickeson v. Daw Forest Products,* 827 F.2d 627 (9th Cir. 1987).

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[2] *See, e.g., State of Montana,* 107 Lab. Arb. (BNA) 1060 (Calhoun 1997) ("Seniority is a creature of the contract. The grievant cannot be terminated from his employmnt and retain his seniority. An employee maintains his seniority rights because of his status as an employee under the contract."); *Multi-Clean, Inc.,* 102 Lab. Arb. BNA 463, 466 (Miller, 1993) (loss of seniority provision limits employer's discretion to discharge); *Bowater Carolina Co.,* 92 Lab. Arb. (BNA) 162, 167 (Clarke, 1989) (loss of seniority for cause provision "[b]y clear implication . . . limits the Company's right to discharge employes to situations wherein such actions are for cause."); *Westinghouse Materials Co.,* 89 Lab. Arb. (BNA) 1150 (Traynor, 1987) (for cause loss of seniority provision, standing alone, presumed to limit employer's discretion to discharge); *Boyle-Midway, Inc.,* 70 Lab. Arb. (BNA) 963, 966 (Traynor, 1978) ("the termination of seniority rights was the same thing as terminating an employee's right to employment"); *Bassick Co.,* 38 Lab. Arb. (BNA) 278 (Seitz, 1962) (termination of employee's seniority is same thing as termination of employment relationship), and *Higgins, Inc.,* 24 Lab. Arb. (BNA) 453, 455 (Morvant, 1955) (a clause stating that seniority is lost where employee is discharged for cause "unquestioningly restrict[s] or limit[s] management's rght to discharge for cause.")

In *Excel Corp. v. United Food and Commercial Workers International Union, Local 431*, 102 F.3d 1464 (8th Cir. 1996), the Eighth Circuit upheld the lower court's granting of the employer's motion for summary judgment in an action brought to vacate an arbitrator award. In *Excel*, the Eighth Circuit found that the arbitrator's ignored the plain language of the CBA at issue and instead relied upon parol evidence in rendering his award. Consequently, the Eighth Circuit found that the arbitrator's award did not "draw its essence from the agreement" and upheld the District Court's order vacating the award.

The CBA in *Excel* contained a management rights provision under which the employer retained

> the right to hire, suspend, discipline or discharge for cause, to assign jobs to determine qualifications and the ability of employees, to transfer, promote or demote employees, [and] to increase and decrease the working force . . . .

102 F.3d at 1469. The CBA also contained a seniority provision which stated that "[a]n employee shall lose his seniority for several enumerated reasons, including "discharge for proper cause" and "[a]bsent from work for any reason for [a] period of twelve (12) months." *Id.*, at 1466. Last, the CBA contained the following "anti-discrimination" clause:

> The Company and the Union agree that they will not discriminate against any employee or applicant for employment because of race, sex, color, creed, nationality, age, religion, veteran status, handicaps, or national origin.

Id., at 1467.

The employer in *Excel* discharged approximately fifty (50) employees who had sustained on-the-job injuries and took medical leaves of absence. The union filed griev-

ances alleging that the seniority provision was not intended by the parties to be used to terminate employees who were laid off due to work-related injuries. The arbitrator ruled in the union's favor, relying on parol evidence to establish that, in light of the anti-discrimination provision, employees injured on the job should be excluded from the scope of the seniority provision.

The Eighth Circuit noted that the arbitrator properly resolved "[t]he only ambiguity . . . in the language of the seniority provision . . . i.e., that 'loss of seniority' means termination." 102 F.3d at 1470. Thus, according to the Eighth Circuit,

> [N]o ambiguity exists as to the interplay between [the] language [contained in the management rights provision] and the seniority provision, which was interpreted by the arbitrator to include discharging employees.

Id., at 1470. The Eighth Circuit found fault with the arbitrator's analysis, however, because the arbitrator went beyond the clear language of the CBA to consider parol evidence on the question of whether the seniority provision conflicted with the anti-discrimination provision, thereby "creat[ing] an ambiguity where none existed". *Id.*, at 1469.

It is crucial to note that, in affirming the District Court's order vacating the arbitrator's award, the Eighth Circuit objected only to the arbitrator's straying beyond the clear and unambiguous language of the CBA. 102 F.3d at 1468. The Eighth Circuit found no need to disturb the basic finding of the arbitrator, that "the 'loss of seniority' language included termination of employment[,]" *Id.*, at 1468 n.4, because in making that finding the arbitrator was clearly construing and applying the language of the CBA.

In contrast to the approach of the Eighth and Ninth Circuits, an approach wholly consistent with national labor policy, the Seventh Circuit in the present case has rendered an ultra-literal opinion that, if adopted on a wider scale, would upset the settled expectations of parties to hundreds and thousands of labor agreements. The split in the Circuits regarding this issue is particularly troublesome because federal law mandates uniform interpretation of CBAs throughout the nation. As this Court has repeatedly noted, the body of law regarding the interpretation of CBAs " 'is peculiarly one that calls for uniform law.' " *Teamsters, Chauffeurs, Warehousemen & Helpers v. Lucas Flour Co.*, 369 U.S. 95, 104 (1962), *quoting Pennsylvania R. Co. v. Public Service Comm'n*, 250 U.S. 566, 569 (1919).

Local 1393 respectfully submits that the split in the circuits created by the Seventh Circuit's decision in this case poses a threat to the orderly administration of justice and calls out for resolution by this Court.

II. THE SEVENTH CIRCUIT'S OPINION IS CONTRARY TO THIS COURT'S PRECEDENT.

There is a "well recognized policy of federal labor law favoring arbitration of labor disputes" which was established by this Court in the Steelworkers Trilogy. *See United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers of America v. Warrior & Gulf Navigator Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960). Indeed, this policy favoring the resolution of disputes through grievance/arbitration procedures is set out explicitly in 29 U.S.C. § 173(d), which states, in pertinent part:

> Final adjustment by a method agreed upon by the parties is declared to be the desirable method for set-

> tlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.

The rule applicable to disputes arising under a collective bargaining agreement covered by 29 U.S.C. § 185(a) is that where such a CBA contains an arbitration clause,

> a presumption of arbitrability [is created] in the sense that "[a]n order to arbitrate a particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."

AT & T Technologies, 475 U.S. 643, 650 (1986), *quoting Warrior & Gulf*, 363 U.S. at 582-83.

The presumption of arbitrability resulting from the presence of an arbitration clause is particularly compelling where the dispute is over the fairness of an employee's discharge. This presumption of arbitrability of a labor dispute arising under a labor agreement, reaffirmed in *Wright v. Universal Maritime Service*, 119 S. Ct. 391 (1998), is based on the premise that "arbitrators are in a better position than courts *to interpret the terms of a CBA*". 119 S. Ct. at 395. This Court has time and again expressed the policy that courts are not to delve into the substantive provisions of labor agreements except to determine wheher the union is making a claim that on its face is governed by the labor agreement. *American Manufacturing*, 363 U.S. at 563.[3]

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[3] In *Raceway Park v. SEIU Local 47*, 167 F.3d 953, 959 (6th Cir. 1999), the Sixth Circuit set out in stark detail how the national labor policy has benefitted from a reliance upon contractual grievance/arbitration mechanisms. The statistics cited by the Sixth

The presumption of arbitrability may be overcome only by "forceful evidence" of an intent to exclude a particular claim. *See, e.g., International Union of Operating Engineers Local 103 v. Indiana Construction, Inc.*, 910 F.2d 450, 452 (7th Cir. 1990). This presumption is derived from and supported by the general preference for arbitration which "furthers the national labor policy of peaceful resolution of labor disputes and thus best accords with the parties' presumed objectives in pursuing collective bargaining." *AT & T*, 475 U.S. at 65, *quoting Schneider Moving & Storage Co. v. Robbins*, 468 U.S. 364, 371-72 (1984).

In general, a grievance and arbitration procedure is regarded as a union's compensation for agreeing not to strike

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Circuit demonstrate that the Seventh Circuit's opinion in this case is very much in the minority:

> The twin products of the Supreme Court's decisions in *American Manufacturing* and *Warrior & Gulf*—a virtually irrebuttable presumption of arbitrability and a sharply limited role for the courts—has had a salutary effect upon grievance arbitration. In a 1990 study of all reported federal district court cases from 1960 until the end of 1988 pertaining to litigation brought to compel grievance arbitration, only 143 district court decisions involved pre-arbitration judicial intervention. Of the 136 decisions which actually resolved the arbitrability question, 103 (76%) resulted in a judicial order compelling arbitration. Over the course of 28 years, only 33 district court decisions declined to direct grievance arbitration. *See* Charles B. Craver, *Labor Arbitration as a Continuation of the Collective Bargaining Process*, 66 Chi. Kent L. Rev. 571, 581 (1990) (citing Peter Feuille & Michale LeRoy, *Grievance Arbitration Appeals in the Federal Courts: Facts and Figures*, 45 Arb. J. 35, 39 (Mar. 1990)). "When one recognizes that thousands of contractual disputes were taken to arbitration during those twenty-eight years, it becomes apparent that the Supreme Court approach has encouraged parties to conclude their bargaining process with respect to contract disputes in the arbitral forum, instead of through resort to judicial intervention." *Id.* at 581-82.

during the period the labor agreemnt is in effect. Because the CBA in this case contains both a broad no-strike clause and a broad grievance-arbitration provision, reciprocity demands that few exceptions be read into the grievance provisions, and then only if such exceptions are express and stated with specificity. *American Manufacturing*, 363 U.S. at 567.

In the present case, the Seventh Circuit agreed with the District Court that the grievance clause contained in the CBA is "very broad." (App. 5a.) A grievance is defined as "[a]ny difference arising beween an employee or a group of employees as to [UDWI's] interpretation or application of [the CBA] or any of its terms and conditions . . . .." (App. 2a.) The presence of such a broad grievance clause further strengthens the presumption of arbitrability. *AT & T*, 475 U.S. at 650; *see also John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 550 (1964).

Under the CBA, arbitration is precluded with respect to "questions of management and matters retained by the employer" in the management rights clause but is permitted "as to any other questions." (App.. 2a.) The management rights clause states, in relevant part,

> Subject only to any limitations contained in this Agreement, the union recognizes and agrees that the Employer retains the exclusive right to . . . discharge . . . and discipline its employees.

(App. 3a.) The management rights clause, which clearly establishes that the rights of management are subject to *any* of limitation found elsewhere in the CBA, is much less sweeping than the management rights clause that this Court interpreted in the benchmark case of *United Steelworkers of America v. Warrior & Gulf Navigator Co.*, 363 U.S. 574 (1960).

In *Warrior & Gulf*, a case where the union challenged the asserted right of the employer to subcontract maintenance work, the management rights clause stated simply that "matters which are strictly a function of management shall not be subject to arbitration under this section." *Id.*, at 576. This Court took note of the fact that, under the applicable CBA, any "differences" that arose, or "any local trouble of any kind", would properly implicate the grievance procedure. Although the language of the CBA broadly exempted from arbitration "matters which are strictly a function of management", this Court nonetheless found that the employer's decision on subcontracting constituted a dispute over the meaning and application of contract language that the parties had agreed to submit to an arbitrator. *Id.*, at 585.

The language contained in the CBA in this case makes a more compelling case for arbitration than the language that this Court confronted in *Warrior & Gulf*. The arbitration clause in Article II, Section 5 of the CBA precludes arbitration only if the specific management right to which the union's grievance is addressed is unaffected by "*any* limitations contained in the Agreement." (Emphasis added.) The prefatory language in the management rights clause of Article II, Section 5 makes it clear that management's rights may be circumscribed by *any* limitations set out anywhere in the CBA, not just by those which are express or explicit. In searching the CBA for limitations on the right to discharge, it is entirely natural and consistent with recognized labor law principles to focus on the seniority rights clause, which contains an express "cause" limitation on the right of UDWI to break and not restore a discharged employee's seniority.

The Seventh Circuit acknowledged that this Court's jurisprudence on labor arbitration requires that arbitration be compelled whenever an arbitration clause is

merely "susceptible of an interpretation that covers the asserted dispute" and that federal courts resolve any doubts as to arbitrability in favor of coverage. The Seventh Circuit further noted, quoting from its decision in *Logistics Support Group*, 999 F.2d 227, 230, that "the management rights clause may not be considered apart from the rest of the agreement." (App. 5a.) Nonetheless, the Seventh Circuit upheld the decision of the District Court because the terms of the management rights clause in the CBA "so clearly state that [UDWI] possesses plenary authority over discharge decisions". (App. 6a.)

Contrary to the Seventh Circuit's conclusions, however, the management rights clause does not give the employer "plenary authority over discharge decisions" but, rather, explicitly states that the right to discharge may be circumscribed by *any* limitations set out anywhere in the CBA. The seniority provision, Article V, Section 4 contains such limitations. If nothing else, whether the express limitation on the right to break and terminate an employee's seniority is also a limitation on the right to discharge, as recognized by this Court, is *in itself* a quintessential contract interpretation question best left to an arbitrator, *Wright, supra.*

Given the conflict in the Circuits as well as the Seventh Circuit's failure to follow long-standing precedent, Local 1393 respectfully submits that this Court should accept this case for hearing and compel arbitration of the discharge grievance.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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